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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1978

No. 78-5283

JAMES A. JACKSON,

Petitioner,

v

COMMONWEALTH OF VIRGINIA and
R. ZAHRADNICK, Warden,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR AMICUS CURIAE
STATE OF MICHIGAN

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INTEREST OF THE AMICUS CURIAE

This case involves, *inter alia*, the issue of the appropriate standard of review to be exercised by a federal court in habeas corpus proceedings challenging the constitutionality of state court convictions in which it is alleged that insufficient evidence was adduced to support each element of the crime charged. As counsel for the Michigan Department of Corrections and, therefore, for the wardens of the various penal institutions in Michigan, the Michigan Department of Attorney General deals on a daily basis with habeas corpus petitions filed by state prisoners, including many petitions which challenge the sufficiency of evidence adduced at state court trials.

As a matter of law, the issue in the instant case presents

important questions concerning the proper relationship of the states and the federal government in habeas corpus proceedings. Because federal habeas corpus proceedings involve collateral review of state court convictions which have been reviewed and affirmed within the state appellate court system, important questions are presented as to the weight to be accorded to state court findings of fact and conclusions of law. Important questions of comity, federalism and the finality of state court criminal convictions are also involved.

In addition to the important legal issues involved, this case has a significant practical impact upon the operations of state governmental agencies such as the Michigan Department of Corrections and the Michigan Department of Attorney General because of the ever-increasing flood of habeas corpus petitions filed by state court prisoners seeking to overturn their convictions. Any expansion of the issues cognizable in such proceedings will necessarily have a significant impact upon the workload of such agencies and upon the utilization of personnel and other resources.

Because of the importance of the issue presented in this case, the State of Michigan files this amicus curiae brief pursuant to United States Supreme Court Rule 42, in support of Respondent Commonwealth of Virginia.

ARGUMENT

IN FEDERAL HABEAS CORPUS PROCEEDINGS IN WHICH IT IS ALLEGED THAT INSUFFICIENT EVIDENCE WAS ADDUCED TO SUPPORT A STATE COURT CONVICTION, THE PROPER STANDARD OF REVIEW IS WHETHER THERE IS ANY COMPETENT EVIDENCE TO SUPPORT EACH ELEMENT OF THE CHARGED OFFENSE.

It is of course beyond dispute that a state court conviction unsupported by *any* evidence as to each element of the charged offense violates due process. *Thompson v City of Louisville*, 362 US 199 (1960). Furthermore, state court convictions must, as a matter of federal due process, be supported by proof beyond a reasonable doubt of every fact necessary to constitute the crime charged. *In re Winship*, 397 US 358 (1970). Michigan law has, for many decades, supported the proposition that due process of law requires that a criminal conviction can only be obtained by evidence establishing guilt beyond a reasonable doubt. *People v Licavoli*, 264 Mich 643 (1933).

The *Winship* rule protects and promotes the "fundamental value determination of our society that it is far worse to convict an innocent man than to let a guilty man go free." *In re Winship, supra*, 397 US at 372 (Harlan, J., concurring). In *Winship* this court described the "vital role" that the reasonable doubt requirement plays in our criminal justice system, *In re Winship, supra*, 397 US at 363-364:

"The accused during a criminal prosecution has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction. Accordingly, a society that values the

good name and freedom of every individual should not condemn a man for commission of a crime when there is reasonable doubt about his guilt. As we said in *Speiser v Randall* [357 US 513, 525-526 (1958)]: "There is always in litigation a margin of error, representing error in fact-finding, which both parties must take into account. Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of persuading the fact finder at the conclusion of the trial of his guilt beyond a reasonable doubt."

Both *Thompson v Louisville*, *supra*, and *In re Winship*, *supra*, arrived in this Court on direct review (by certiorari and appeal, respectively) following state court proceedings. In such circumstances review of the sufficiency of evidence is fitting and proper because the important values enunciated in *Winship* must be protected not only at trial and upon direct appeal within the state courts, but also upon review of such convictions in this court by appeal or certiorari.

The State of Michigan as amicus curiae does not advocate retreat from the *Winship* principles when applied at state court trials, upon direct review within the state appellate system, and upon review by this Court by way of appeal or certiorari. We submit, however, that in the context of a collateral review of such a state court conviction by way of a federal habeas corpus proceeding, other considerations come into play which militate against permitting federal courts to re-evaluate the sufficiency of evidence sustaining a conviction, once that question has been afforded a full and fair review within the state court system.

To the extent that the question of sufficiency of evidence is constitutionally-based, it is within the power of federal

courts to consider the issue in habeas corpus proceedings, 28 USC §§ 2241, 2254. The important question in this case deals with the appropriate exercise of that power. In *Francis v Henderson*, 425 US 536, 538-539 (1976) in deciding that a state prisoner who failed to make a timely challenge to the composition of the grand jury that indicted him could not after his conviction bring that challenge in a federal habeas corpus proceeding:

"There can be no question of a federal district court's power to entertain an application for a writ of habeas corpus in a case such as this. 28 USC §§ 2241, 2254. The issue, as in [*Davis v United States*, 411 US 233], goes rather to the appropriate exercise of that power. This Court has long recognized that in some circumstances considerations of comity and concerns for the orderly administration of criminal justice require a federal court to forego the exercise of its habeas corpus power. [citation omitted]. The question to be decided is whether the circumstances of this case are such as to invoke the application of those considerations and concerns."

Francis, and the subsequent decision in *Wainwright v Sykes*, 433 US 72 (1977) support the proposition that not every constitutionally-based challenge to a state court conviction ought to be considered in a collateral challenge to that conviction in a federal habeas corpus proceeding.

Similarly, in *Stone v Powell*, 428 US 465 (1976) the court considered the question whether state prisoners who have been afforded the opportunity of a full and fair consideration of their reliance upon the exclusionary rule with respect to seized evidence by the state courts at trial and on direct review may invoke their claim again on federal habeas corpus review and concluded that the utility of the exclusionary rule was outweighed by the costs of extending the rule to collateral

review of such claims. This court noted, 428 US at 491, fn 31, that after such claims have been examined by two or more tiers of state courts, resort to habeas corpus may result in serious intrusions on values important to our system of government including,

“(i) the most effective utilization of limited judicial resources, (ii) the necessity of finality in criminal trials, (iii) the minimization of friction between our federal and state systems of justice, and (iv) the maintenance of the constitutional balance upon which the doctrine of federalism is founded.”

In addition to the factors indicated in *Francis v Henderson*, *supra*, and *Stone v Powell*, *supra*, there are other considerations supporting the proposition that federal courts ought not to weigh the sufficiency of evidence supporting a state court conviction when that issue has been fully and fairly presented to the state courts for consideration upon direct review. It should, of course, be noted that most Circuit Courts of Appeals have followed the traditional rule that the sufficiency of evidence is not cognizable in federal habeas corpus proceedings. For example, in *Brooks v Rose*, 520 F2d 775, 777 (CA 6, 1975) the court said:

“The general rule is that the sufficiency of evidence to sustain a conviction in a state court prosecution is not reviewable in a federal habeas corpus proceeding. [citations omitted]. However, a conviction which is totally devoid of evidentiary support as to a crucial element of the offense is unconstitutional under the Due Process Clause of the Fourteenth Amendment. [citations omitted]. Such a claim is reviewable in a federal habeas corpus proceeding.

“• • •

“The question before this Court is limited to whether the record contains any relevant evidence whatsoever to support the jury’s finding. . . .”

Other arguments supporting the contention that the sufficiency of evidence ought not to be reviewed by federal habeas corpus courts are eloquently set forth in Bator, “Finality in Criminal Law and Federal Habeas Corpus for State Prisoners,” 76 Harv. L. Rev. 441 (1963). In that article Professor Bator notes that since federal courts have no more inherent ability to ascertain the “truth” of historical facts than a state court, the appropriate inquiry should be whether the arrangements used to find those facts and apply the law were adequate. 76 Harv. L. Rev. at 449. Professor Bator also enunciates several important societal values which are promoted by establishing the finality of state court convictions, 76 Harv. L. Rev. at 451-452: The conservation of economic, intellectual, moral, and political resources; promotion of the educational, deterrent, and rehabilitative functions of the criminal law by insuring swift, certain and just punishment; and minimizing the implicit lack of confidence in state court adjudication if repeated relitigation of the same issue is routinely permitted.

So long as state court juries are properly instructed as to their function to determine guilt only upon proof of each element of the offense beyond a reasonable doubt and so long as state court review of convictions affords a full and fair opportunity to litigate the issue of the sufficiency of the evidence, there is simply no need to assume that federal courts in habeas corpus proceedings have any greater expertise to decide such purely factual questions which must, of course, depend upon such intangible factors as the credibility of witnesses’ testimony. The deference which should be accorded to factfinding by a jury or trial court, was emphasized by this court in *In re Winship*, *supra*, 397 US at 364:

"Where one party has at stake an interest of transcending value—as a criminal defendant his liberty—this margin of error is reduced as to him by the process of placing on the other party the burden of . . . persuading the *factfinder* at the conclusion of the trial of his guilt beyond a reasonable doubt. Due process commands that no man shall lose his liberty unless the Government has borne the burden of . . . convincing the *factfinder* of his guilt.' To this end, the reasonable-doubt standard is indispensable, for it 'impresses on the *trier of fact* the necessity of reaching a *subjective* state of certitude on the facts in issue.' " (emphasis added).

In *Stone v Powell*, *supra*, 428 US at 539, fn 35 this court acknowledged the competence of state courts as fair and competent forums for the adjudication of federal constitutional rights:

"Despite differences in institutional environment and the unsympathetic attitude to federal constitutional claims of some state judges in years past, we are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States. State courts, like federal courts have a constitutional obligation to safeguard personal liberties and to uphold federal law."

Professor Bator has noted the incongruous results which might develop should the federal courts be permitted to reassess the sufficiency of the evidentiary basis for a state court conviction, 76 Harv. L. Rev. at 503, 508:

"But if the federal judge has an impeccable record before him, that is, he has no reason to believe that the factfinding processes of the state courts were in any way

inadequate to the task at hand, on what principle should he decide whether to exercise such a discretion? Note that if he does exercise it, he would seem to be completely free to disregard the state-court findings even though the issue may turn on an assessment of the veracity of witnesses; in such a case we have the startling result that a state prisoner is deemed to be held in violation of the Constitution of the United States because a state judge [or a jury] believed the prosecution's witnesses and the federal judge [reviewing a transcript of the state court proceedings] believes those of the defendant.

• • •

"And to revert to the instance previously given, if a federal judge releases a prisoner because his opinion about the credibility of a witness differs from that of a state judge, that episodic difference of opinion cannot be sanctified into a great issue merely because the result is characterized as a ruling as to constitutional rights. Litigation about constitutional rights *may* raise issues of peculiar sensitivity and importance, but will not necessarily do so. The issue may involve simply the application of well-settled and well-understood principles to a highly particular and closely balanced set of facts with no further elaboration of the principles themselves being involved, and review may consequently consist of nothing more than second-guessing the ultimate leap of judgment involved. On the other hand, if the issue in the particular case really is important, it is the very purpose of the certiorari jurisdiction to provide direct Supreme Court review."

In summary the State of Michigan as *amicus curiae* submits that the federal courts can and should supervise, in habeas corpus proceedings, the fairness of the methods by which a state adjudicates claims of federal rights. The question in the instant case is whether the scope of review in such collateral

proceedings should be extended merely on the general premise that federal courts somehow provide better justice than state courts, in order to permit federal courts to reassess the sufficiency of evidence in cases where there is no reason to suspect less than full, fair and conscientious state court determination and review of that issue. The state of Michigan submits that a criminal defendant's constitutional right to proof beyond a reasonable doubt of each of the elements of the crime charged is adequately protected by proper jury instructions and review of convictions by state appellate courts and by this Court upon certiorari or appeal. Federal courts are no more competent to make better determinations of that issue than are the state courts and, because of the important state interests in finality and the proper administration of the criminal justice system, the sufficiency of evidence adduced at a state court trial should not be subject to reassessment in federal habeas corpus proceedings, so long as there is some evidentiary basis for each element of the offense charged.

CONCLUSION

For the reasons set forth above, the State of Michigan as amicus curiae respectfully submits that the decision of the Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

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